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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000583

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TAGS: PGOV PNAT KDEM I2

SUBJECT: IRAQI LEGAL ADVISERS AGREE THAT COUNCIL OF  
REPRESENTATIVES MUST CONVENE WITHIN CONSTITUTIONAL  
DEADLINE, BUT DISAGREE OVER WHETHER DEADLINE CAN BE  
EXTENDED

REF: BAGHDAD 499

Classified By: POLITICAL COUNSELOR ROBERT S. FORD, FOR REASONS 1.4 (B)  
AND (D).

¶1. (C) Summary. The requirements of Article 54 of the Constitution continue to elicit multiple legal opinions. In separate meetings February 21 and 22, TNA Legal Committee Muhsin Saadoun and Presidency Council Legal Adviser Ameer Al-Shammari offered separate interpretations. The former said Article 54 required the Council of Representatives (CoR) to convene by February 25, while the latter said it could convene as late as March 12. Neither agreed with the interpretation that Article 54 allowed the Presidency Council to issue a decree within fifteen (or thirty) days for the CoR to convene at a date outside that timeline. Both agreed that a first session could be extended so that the CoR leadership would not have to be elected at the first session in order not to violate Article 55. End Summary

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TNA LEGAL COMMITTEE CHAIRMAN: COR MUST CONVENE BY FEBRUARY 25  
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¶2. (C) In a February 21 meeting, Chairman of the TNA Legal Committee Muhsin Saadoun told PolOffs that TNA Speaker Hajim al-Hassani asked him to review the Constitution and give his opinion as to when the Council of Representatives (CoR) should convene. Saadoun said he interpreted Article 54 to require that the CoR convene within 15 days of the certification of election results (i.e., February 25). He also did not think that the provision would allow an extension of this deadline. (Comment. Official translators at Post and in Washington assure us that according to the constitution text, the Presidency Council only must issue a decree within 15 days and that this period may be extended for another 15 days. However, Saadoun's opinion that the COR must be convened within the specified period of time is in concert with the Presidency Council Legal Adviser's opinion (see para 5). End comment.)

¶3. (C) In order to obey the Constitution, Saadoun argued, the CoR should convene for a ceremonial first session (a day of speeches) that would be continued at a later date. He stated that it is important to put pressure on the political parties to finish the government formation negotiations. Such pressure could include electing the CoR leadership even if the political blocs have not finished their negotiations. He said the Iraqi public perceives that the parties are not really negotiating for a unity government, but instead are looking more narrowly for specific positions within the government.

¶4. (C) In a February 22 meeting, Presidency Council Legal Adviser Judge Ameer al-Shammari told Embassy Legal Advisers and PolOff that some political entities are misleading the Iraqi public by asserting that there will be legal/constitutional problems if the CoR does not convene by February 25; specifically, they have misled the Iraqi public by failing to explain the 15-day extension allowed under Article 54. He agreed with the argument that, although the Transitional Administrative Law (TAL) remains in effect until the formation of the new government, the constitutional provisions and timelines related to the formation of the government should be followed. (Comment. Judge al-Shammari previously asserted in the media that the constitution and its timelines do not apply and that only the TAL is relevant to the government formation process. Embassy Legal Advisers contested this interpretation of the relevant law and maintained that there must be some legally binding element to the constitution's government formation provisions ) despite the fact that the constitution as a whole is not in force -- because it is the constitution that also explains the institutions that must be formed, the entities that choose the relevant candidates, and the voting thresholds required for approval. If all of these aspects of the new constitution apply, the government formation deadlines also presumably would apply. Judge al-Shammari did not necessarily agree with this assessment but did appear to concede that the constitution deadlines should be followed as a practical matter. End comment.)

¶5. (C) Judge al-Shammari disagreed with Post's translation of Article 54 as requiring only that the Presidency Council call

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for the CoR to convene within fifteen or, with an extension, thirty days of the certification of results; rather, he believes that the CoR must be called and must convene within thirty days of the certification (March 12), assuming the extension is invoked. (Note. This opinion is inconsistent with the opinion of Muhsin Saadoun, the TNA Legal Committee Chairman, as to whether a 15 day extension exists -- Saadoun does not believe an extension is possible -- but is consistent with Saadoun to the extent that the CoR actually must convene within a specified period of time. Judge al-Shammari did appear to agree with the recommendation that the CoR convene for a ceremonial first session that could be continued at a later date when the elections for the CoR leadership would be held (as part of the larger government package)).

¶6. (C) Al-Shammari said he had personally informed President Jalal Talabani of his legal opinion, but he was not aware if Talabani had shared this with the other political parties.

KHALILZAD